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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

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IN THE MATTER OF
THE CHEMITHON CORPORATION,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 280

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250.00 civil penalty for an alleged smoke emission violation of respondent's Regulation 1, came before all members of the Pollution Control Hearings Board (William A. Gissberg, presiding) in the conference room of respondent's Seattle offices at 10:00 a.m. May 11, 1973. The matter was heard seriatim with a related but not consolidated matter, PCHB No. 254.

Appellant appeared through J. Richard Aramburu, Attorney at Law, and respondent through its counsel, Keith D. McGoffin. Evan Aaron, Seattle court reporter, recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were admitted, ten
2 by respondent, four by appellant. Counsel filed post-hearing briefs.

3 From testimony heard, exhibits examined and briefs considered,
4 the Pollution Control Hearings Board makes these

5 FINDINGS OF FACT

6 I.

7 Appellant manufactures granulated detergent in a sulfonator plant
8 at 5430 West Marginal Way S.W., Seattle, King County. To control and
9 limit the escape of pollutants, appellant devised and operates an
10 induced steam scrubber system through which emissions pass before
11 being discharged by a stack into the ambient air. Frequent plant tests
12 of emissions entering the stack show that when the standard operating
13 procedures are functioning normally, stack emissions contain water
14 vapor, particulants, sulfur dioxide and sulfur trioxide in amounts
15 not likely to exceed standards set in respondent's Regulation 1.

16 II.

17 Appellant takes pride in the efficiency of its sulfonator plant
18 scrubber and believes it is the best such device in the world.

19 III.

20 No tests or testimony are in the record to show what emissions
21 enter the stack when the plant is experiencing an upset condition in
22 its operating procedures.

23 IV.

24 At about 3:00 p.m. on December 18, 1972, respondent's supervising
25 inspector, a man experienced, qualified and certified by the state for
26 stack plume evaluation, observed blue white smoke emissions of 80%

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 opacity for 6 minutes from appellant's sulfonator plant stack. He
2 entered the plant and was informed there was an upset condition caused
3 by an electrical system malfunction. He ascertained, both from an
4 official of appellant and from records at respondent's headquarters
5 that appellant had not notified respondent of the upset condition. The
6 supervising inspector issued to appellant Notice of Violation Number 5837,
7 citing Section 9.03 of respondent's Regulation 1. Subsequently, and in
8 connection therewith, respondent issued to appellant Notice of Civil
9 Penalty Number 604 in the amount of \$100.00, said amount being
10 two-fifths of the maximum allowable amount for any one violation of
11 respondent's Regulation 1.

12 V.

13 Section 9.03 of respondent's Regulation 1 makes it unlawful to
14 cause or allow the emission for more than three minutes in any one
15 hour period of an air contaminant which is greater in opacity than
16 40%.

17 VI.

18 Section 9.16 of respondent's Regulation 1 provides that when an
19 unavoidable upset condition causes emissions which exceeds limits
20 prescribed in Regulation 1, no violation shall be cited if the upset
21 condition is reported "immediately" to respondent.

22 From these findings the Pollution Control Hearings Board comes
23 to these

24 CONCLUSIONS

25 I.

26 In as much as the state supreme court (Sittner vs. Seattle, 62 Wn

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 2d 834) has accepted the Ringelmann Smoke Chart as a reasonable measure
2 of air pollution, it is clear that the December 18, 1972 emission from
3 appellant's sulfonator plant stack made a major pollution contribution
4 to ambient air in the vicinity of the plant.

5 II.

6 The emission was caused by a malfunction, or upset condition, of
7 appellant's manufacturing process, a malfunction which was known to
8 appellant as soon as it occurred. Appellant, however, did not notify
9 respondent "immediately" of the emergency. It certainly is not
10 notification of respondent for appellant to discuss the breakdown with
11 respondent's supervising inspector after the inspector has spent at
12 least 6 minutes outside the plant observing the stack's polluting plu

13 III.

14 Appellant is not required by respondent's Regulation 1 to notify
15 respondent when upset conditions occur in its plant processes. But
16 it would not demean appellant's professed expertise in controlling
17 stack emissions for appellant to comply with Section 9.16 of respondent's
18 Regulation 1. In fact, it is a good question to ask why appellant would
19 not make every effort to cooperate with the provisions of Section 9.16
20 and, thus, give respondent information with which to reply to citizen
21 alarm over such breakdown emissions. But, as we have noted, appellant
22 is not required to observe the provisions of Section 9.16. It can
23 refuse to cooperate. But it must, then, expect the consequences.

24 IV.

25 Appellant was in violation of Section 9.03 of respondent's
26 Regulation 1 on December 18, 1972, as cited by Notice of Violation Number
27 5837, and did not attempt to comply with the mitigating provisions

1 of Section 9.16 of the same regulation.

2 v.

3 In view of these circumstances, respondent's Notice of Civil
4 Penalty Number 604, being less than one-half of the maximum allowable
5 penalty which could have been levied, is most reasonable.

6 Therefore, the Pollution Control Hearings Board issues this

7 ORDER

8 The appeal is denied and Notice of Civil Penalty Number 604, in
9 the amount of \$100,00, is sustained.

10 DONE at Lacey, Washington this 3 day of July, 1973.

11 POLLUTION CONTROL HEARINGS BOARD

12 Walt Woodward
13 WALT WOODWARD, Chairman

14 W. A. Gissberg
15 W. A. GISSBERG, Member

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17 JAMES T. SHEEHY, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER